

DC-198
Rev. 7-01

MOTION FOR POST CONVICTION COLLATERAL RELIEF

COMMONWEALTH OF PENNSYLVANIA
VSEDWARD JOSEPH McNATT

(Name of Defendant)

COURT AND DOCKET NUMBERS

FILED
COMMON PLEAS COURT
VENANGO COUNTY, PA
2004 JUL 14 A
PEGGY L. MILLER
PROTHONOTARY AND
CLERK OF COURTS
49

To be filled in by Clerk of Court

NOTE: List below those informations or indictments & offenses for which you have not completed your sentence.

INFORMATION OR INDICTMENT NUMBERS:

CR183/1998; and CR182/1998

I WAS CONVICTED OF THE FOLLOWING CRIMES:

FORGERYTHEFT BY DECEPTION

1. MY NAME IS:

EDWARD JOSEPH MCNATT

2. I AM NOW

(a) On Parole (b) On Probation (c) Confined in SCI HOUTZDALE
(d) Residing at _____

3.

I WAS SENTENCED ON October 28, 1998 TO A TOTAL TERM
OF 2 yrs. 8 mos. to 12 yrs., COMMENCING ON 10-28, 1998 BY
JUDGE(S) OLIVER J. LOBAUGH

FOLLOWING A:	<input type="checkbox"/> Trial by jury	<input checked="" type="checkbox"/> Plea of Guilty
	<input type="checkbox"/> Trial by a judge without a jury	<input type="checkbox"/> Plea of nolo contendere
I am	<input checked="" type="checkbox"/> Serving	<input type="checkbox"/> Waiting to serve
		The Sentence Imposed

4. I AM ELIGIBLE FOR RELIEF BECAUSE OF:

- (I) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (II) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (III) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- (IV) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
- (V) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
- (VI) The imposition of a sentence greater than the lawful maximum.
- (VII) A proceeding in a tribunal without jurisdiction.

5. THE FACTS IN SUPPORT OF THE ALLEGED ERROR(S) UPON WHICH THIS MOTION IS BASED ARE AS FOLLOWS: (State facts clearly and fully; argument, citations, or discussions of authorities shall not be included.)

(A) I know the following facts to be true of my own personal knowledge:

I WAS SENTENCED IN AN AGGRAVATED RANGE IN THE SENTENCING

GUIDELINES, WHICH WERE DECLARED UNCONSTITUTIONAL.

MY PLEA WAS NOT ENTERED INTO KNOWINGLY AND WILLINGLY.

COUNSEL WAS INEFFECTIVE FOR NOT EXPLAINING THE GUIDELINES I (CONVO) WAS GOING TO BE SENTENCED UNDER AFTER TAKING THE PLEA.

(B) The following facts were made known to me by means other than my own personal knowledge (Explain how and by whom you are informed):

I WAS INFORMED BY THE UNITED STATES SUPREME COURT.

(C) In the event my appeal is allowed as requested under #4, the following are the matters which I intend to assert on that appeal (Specify the matters to be asserted if appeal is allowed)

AGGRAVATED SENTENCE WAS ILLEGAL-

PLEA AGREEMENT WAS NOT SIGNED, KNOWINGLY AND WILLINGLY-

COUNSEL WAS INEFFECTIVE-

(I wish to have this P.C.R.A. left open for amendment(s)).

Public Defender's Office - Venango County

9. I PREVIOUSLY CHALLENGED MY CONVICTION IN THE FOLLOWING COURTS:

Court	Caption	Term Number	Attorney	Relief Requested
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10. THE ISSUES WHICH I HAVE RAISED IN THIS MOTION HAVE NOT BEEN PREVIOUSLY LITIGATED OR ONE OF THE FOLLOWING APPLIES:

(I) The allegation of error has not been waived.
 (II) If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmation of sentence of an innocent individual.

The failure to litigate this issue(s) prior to or during trial or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

11. BECAUSE OF THE FOREGOING REASONS, THE RELIEF WHICH I DESIRE IS:

(A) Release from custody and discharge
(B) A new trial
(C) Correction of Sentence
(D) Other Relief (Specify): _____

12. I request an evidentiary hearing. I certify, subject to the penalties for unsworn falsification to authorities set forth at 18 Pa.C.S. § 4904, that the following persons will testify to the matters stated. I have attached to this petition all documents material to the witness' testimony.

Witness Name: _____

Witness Address: _____

Witness Date of Birth: _____

Witness Testimony: _____

Witness Name: _____

Witness Address: _____

Witness Date of Birth: _____

Witness Testimony: _____

Witness Name: _____

Witness Address: _____

Witness Date of Birth: _____

Witness Testimony: _____

Witness Name: _____

Witness Address: _____

Witness Date of Birth: _____

Witness Testimony: _____

13. Based upon the exceptional circumstances set forth below, I request that the District Attorney produce the following documents:

TRANSCRIPTS OF PLEA NEGOTIATIONS -

TRANSCRIPTS OF PLEA AGREEMENT -

TRANSCRIPTS OF THE PLEA AGREEMENT SENTENCING -

BLAKELY V. WASHINGTON

(SEE ATTACHED)

U.S. v. KELLER, 58 F.3d 884, 893 (2d Cir. 1995)

APPRENDI V. NEW JERSEY

U.S. SUPREME COURT RULED THAT ANY SENTENCE WHICH INCREASES THE PENALTIES FOR PUNISHMENT, MUST BE DECIDED BY A JURY. THIS INCLUDES PLEA BARGAINS.

U.S. SUPREME COURT RULED THAT IT IS 'UNCONSTITUTIONAL' FOR A JUDGE TO SENTENCE A PERSON TO AN AGGRAVATED SENTENCE. ONLY A JURY CAN DECLARE AN AGGRAVATED SENTENCE.

15.

(A) I am ABLE NOT ABLE to pay the cost of this proceeding.

I have \$ 40.00 in my prison account.

(B) My other financial resources are:

NONE

16. (A) I do not have a lawyer and I am without financial resources or otherwise unable to obtain a lawyer.

(1) I request the court to appoint a lawyer to represent me.

(2) I do not want a lawyer to represent me.

(B) I am represented by a lawyer. (Give name and address of your lawyer.)

Edward Joseph McFatt
(Signature of Defendant)

14. I ASK THAT THE COURT CONSIDER THE FOLLOWING ARGUMENT, CITATION AND DISCUSSION OF AUTHORITIES:

THIS NEW INFORMATION, IF WOULD OF BEEN AVAILABLE AT THE TIME OF SENTENCING, WOULD OF LEAD TO A SENTENCE THAT CONFORMED TO THE LEGAL GUIDELINES ALLOWED BY THE COURTS, AND THE CONSTITUTION.

AN ILLEGAL SENTENCE OR BREACH OF PLEA AGREEMENT HAS NO TIME BAR FOR APPEAL AND THIS NEW INFORMATION CAME TO LIGHT WITHIN THE PAST 2 WEEKS.

BOTH CHARGES RESULTED FROM 1 ACT BUT I WAS GIVEN CONSECUTIVE SENTENCES THAT EXCEEDED THE MAXIMUM SENTENCE ALLOWED.

(Notified)

I was never informed by anyone, i.e. Judge, District Attorney, or my Attorney, that my past felonies were going to be used against me in order to sentence me in the aggravated guidelines, as is required by law.

I was assured by my counsel that appeals would be filed regarding my consecutive sentences but my counsel never filed any motions and my own motions were declared "time-banned!"

UNSWORN DECLARATION

I, EDWARD JOSEPH MCNATT do hereby verify that the facts set forth in the above motion are true and correct to the best of my personal knowledge or information and belief, and that any false statements herein are made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C.S. § 4904), relating to unsworn falsification to authorities.

No Notary
Required

Edward Joseph McNatt
(Signature of Defendant)

COMMONWEALTH OF PENNSYLVANIA

VS

EDWARD JOSEPH MCNATT
(Name of Defendant)Criminal
Action No. _____ of _____ 2 _____

ORDER

AND NOW this _____ day of _____, 2 _____ Upon consideration of the foregoing motion:

1. The motion is returned to defendant for amendment as follows, such amendment to be made on or before _____, 2 _____

2. A rule is granted upon the Commonwealth of Pennsylvania to show cause why a hearing should not be granted. The rule is returnable on or before _____, 2 _____

3. The request to proceed as a poor person, without the payment of costs, is granted denied.

4. Upon finding that defendant is unable to obtain a lawyer _____ Esq., is appointed to represent him/her.

5. The Clerk of Court is ordered and directed to do the following forthwith:

(a) To serve a copy of this motion and this order upon the District Attorney of _____ County.
 (b) To send a copy of this motion and this order to _____ Esq., the lawyer for the defendant.
 (c) To send a copy of this order to the defendant.

6.